

National Association for the Advancement of Colored People v. Patterson

Oral Argument - January 15, 1958

Earl Warren

Next case is Number 91, National Association for the Advancement of Colored People Corporation versus State of Alabama on the relation of John Patterson, Attorney General.

Mr. Carter, you may proceed.

Robert L. Carter

If the Court please.

This calls us here from a judgment of the Supreme Court of Alabama, dismissing and denying a petition for writ of certiorari filed by petitioner seeking to review in the Alabama Court an adjudication of contempt and a fine in the sum of \$100,000 on the failure of petitioner to submit its membership lists pursuant to an order of the Circuit Court of Montgomery County.

The issues arose in the following manner.

On June 1, 1956, the Attorney General filed the bill of complaint in the Circuit Court of Montgomery County, alleging that petitioner was doing business in Alabama without complying with the Foreign Registration Act of Alabama.

And alleging, in addition, various of illegal acts, the -- the two that they've named was the fact that the allegation was that petitioner had given moneys to two persons to induce them to apply to the University of Alabama to test these policies excluding Negroes on the basis of race.

William O. Douglas

Your State is in New York, the State of the corporation?

Robert L. Carter

Yes, sir.

Felix Frankfurter

When you say incorporation, would you mind being a little more specific?

Robert L. Carter

We're incorporated in New York.

Felix Frankfurter

Under -- under what?

Robert L. Carter

Under the New York membership (Inaudible) --

Felix Frankfurter

Well, that -- that's what I meant.

It's a particular kind of associated body, isn't it?

Robert L. Carter

Yes, sir.

William J. Brennan, Jr.

What -- under what law did you say the case is?

Robert L. Carter

I didn't hear you.

William J. Brennan, Jr.

Under what --

Robert L. Carter

New York Membership.

William J. Brennan, Jr.

Membership?

Robert L. Carter

Yes.

(Inaudible)

Robert L. Carter

Membership Corporations Act.

Charles E. Whittaker

Well, that -- excuse me, makes anybody corporate however, does it not?

Robert L. Carter

Yes, sir.

Charles E. Whittaker

To get his New York citizenship?

Robert L. Carter

Yes, sir.

William O. Douglas

What have you done in Alabama (Voice Overlap) -- what law -- rather, what did they charged you with failing to do it for them.

Robert L. Carter

They charged that we have failed to register as a foreign corporation that we were doing business in Alabama without first complying with this Act which requires foreign corporations to submit their articles in a corporation to the Secretary of State and designate a place of business, but --

Charles E. Whittaker

The common statute is complying in (Inaudible) every State requires a foreign corporation as a condition (Inaudible) by obtaining a certificate to the procedures provided to deliver the thing.

Robert L. Carter

Precisely.

Charles E. Whittaker

Yes.

The issue here is whether or not they obtained a (Inaudible).

Robert L. Carter

Yes, sir.

Charles E. Whittaker

(Inaudible)

Robert L. Carter

Now, in addition to this failure, they charge that we have done other illegal acts.

And as I started to indicate, the acts that they're charge were that we've given money -- alleged that we've given money to two persons to induce them to enroll at the University of Alabama to test this policy that we had furnished counsel for these persons and that we had incited and aided the Montgomery citizens to boycott the bus lines when they were attempting to secure unsegregated (Inaudible).

On the basis of these allegations alone and without a hearing and with nothing further, we were without notice, enjoined from operation.

The -- the State asked that we'd be enjoined from all organizational activities.

We were so enjoined ex parte and in addition although this was not requested by the State, the Court enjoined us from taking any steps to comply with the law of requiring foreign corporations to domesticate.

Now, we then filed on July 2nd a motion to vacate to dissolve the -- the injunction of temporary decree, which is the procedure that one follows an Alabama Law.

On July 5th, the State came with a motion requiring us to produce pretrial production of various doctrines, including a list of our members and various other items.

This motion was heard on July 9 and on July 9 towards July 11, the Court ordered us to produce these various items including a list of our members and we've cited the -- the specific things that the Court asked that are cited on pages 6, 7, and 8 of our petition filed here.

The Court asked that these or these items be produced on July 16, but it subsequently extended the time for us to produce until July 25th and then simultaneously continued the hearing on the motion to dissolve to July 25th.

We then filed an answer on July 23rd in which we admitted that we had -- that we were -- had chartered branches in the State that we had been in Alabama since 1918, that we had not registered under the -- under the Act because it was our good faith belief that we were not required to do so that we had not furnished any moneys to anybody to enroll in the University of Alabama although we did admit that we've furnished legal counsel and aide to Ms. Lucy to prosecute our

suit, but we have not participated in the Montgomery situation, but that we had given financial assistance and legal aide to the persons who were charged with -- with violations of the State law from refusing to ride the buses unsegregated.

We are -- in our answer, we said that although we do not feel that we are obliged to abide this law, we attached the -- the requisite form and asked the Court to resend its order and vacate its order, barring us from registry so that we could comply with the law.

In other words, we indicate that we're willing to wait whatever contentions we had on that ground.

With this answer, we filed the motion to vacate the interlocutory order of the Court requiring us to produce on constitutional ground and on the ground that the issue was no longer -- the issue of the -- getting all these documents was no longer an issue because of the fact that we had made a full answer and this was a legal question in terms of whether we were or we're not doing business.

But on our refusal to -- the Court refused to grant this motion and on our refusal to give all the names of our members, the Court adjudged us in contempt and find --

Felix Frankfurter

Did you tender to the Court all the documents except for the members of it?

Robert L. Carter

Not yet, Your Honor.

We didn't do that, Your Honor.

Felix Frankfurter

Either I -- I want to be sure.

I heard Mr. Carter to say, did you express readiness to file?

Robert L. Carter

Yes, sir.

We not only expressed readiness, we had secured the forms and attached them to our -- to our answer.

Felix Frankfurter

And still not all of the -- all the things?

Robert L. Carter

Yes, we have.

Felix Frankfurter

Was there anything or are there items in the forms which you were unrelated to, to which you're not willing to respond?

Robert L. Carter

No, the only thing that the form requires them, Mr. Justice Frankfurter, is that you file your articles of incorporation which incidentally the State already had.

They were attached to the complaint which was filed by the Attorney General and that you designate your place of business which the State knew because it's so designated in the bill of complaint and indicating agent for service, these things we do.

William J. Brennan, Jr.

Well, do you mean Mr. Carter that, ordinarily, a foreign corporation needs to do more -- no more than that?

Is that the case in Alabama?

Robert L. Carter

As we understand the law.

Charles E. Whittaker

(Inaudible) in answer to Mr. Justice Frankfurter's question, you said you had filled out those forms?

Robert L. Carter

We secured them from the -- from the Secretary of State and attached them to our answer and indicating --

Charles E. Whittaker

(Inaudible)

Robert L. Carter

We filled them out.

Charles E. Whittaker

You admit that you did have a place of business in Alabama?

Robert L. Carter

We -- we have a southeast regional office in Birmingham which was maintained by (Inaudible).

Charles E. Whittaker

Did you admit that -- therein that you're doing business in Alabama?

Robert L. Carter

We are contesting as I attempt to make it, Your Honor.

Our contention was that we do not think that we are doing business in Alabama.

We do not think that we're doing business in Alabama and we do not think that this law applies, but we were willing to waive and comply with the law and therefore we proceeded to attempt to domestic.

Now, we've indicated that we would file these forms if the Court would permit as to do.

The Court had indicated that we could not even make any attempts to write this.

Felix Frankfurter

Mr. Carter, did this filled out form bear the name of any person and the signature?

Robert L. Carter

It was the -- the form was filled out by the -- by the organization.

I think it has to be signed by the President.

Felix Frankfurter

But was it -- what I want to know.

Was there -- was there in that form appears the name of any person or persons?

Robert L. Carter

It appears the name of the --

Felix Frankfurter

Person.

Robert L. Carter

The person, I believe.

Now, I can't be sure of this but let me say this that whatever was required in terms of the form, we did it and I -- I'm not really clear as to whether or not the name appear by -- as I remember.

The -- the name of the president of the corporation has to be signed.

Felix Frankfurter

My question has pertinence as you will doubt as well as infer from what is required and what may be required -- or may not be required in the disclosure, that's why I'm asking.

Robert L. Carter

Well, as I indicated, when we continued to -- to refuse, to divulge the names of our members pursuant to our -- we were fined, adjudged in contempt and fined \$10,000 with a proviso that we did not comply within five days and the fine would be \$100,000.

Now, on July 20 --

Felix Frankfurter

Was -- was it -- was there any trading by the judge or was there any statement of what the \$10,000 fine was for or against?

Robert L. Carter

Well, I think we have cited the order of -- of the judge, if the Court pleases, in the record.

All I can say is that the judge indicates before the -- our refusal to submit the names as of July 25.

We were fined \$10,000 and adjudged in contempt.

If we did not comply --

Felix Frankfurter

That is if you continued to disobey.

That's what the \$100,000 for?

Robert L. Carter

Yes, sir.

Now, this is cited as --

Felix Frankfurter

Because the \$10,000 fine must have been for the refusal.

Robert L. Carter

Yes, sir.

They -- they were cited at page 13 on -- of the -- at the appendix 13 (a) of the appendix to the petition for writ of certiorari in the record.

Felix Frankfurter

Thank you very much.

Robert L. Carter

Now, on July 30 which is four days afterwards, we came into the trial court with a motion to vacate, stay or set aside the Court's contempt order.

And at that time, Mr. Justice Burton, we tendered compliance with the order of the Court with the exception of the -- the prior portion of the order requiring us to give the names and addresses of our members and a portion of the order which asked us to submit all of our files, all of our letters, all of our correspondents and so forth which we contended was burdensome and would completely disrupt our operation.

Felix Frankfurter

Well, you're purging yourself of all the contempt except on the member's list.

Robert L. Carter

Yes, sir.

Charles E. Whittaker

(Inaudible)

Robert L. Carter

I didn't hear you, sir.

Charles E. Whittaker

(Inaudible)

Robert L. Carter

Yes, sir.

Charles E. Whittaker

(Inaudible)

Robert L. Carter

Yes, sir.

Charles E. Whittaker

In which to comply.

Robert L. Carter

Yes, sir.

Charles E. Whittaker

And on the 30th, you did tender all the materials required by the order (Inaudible).

Robert L. Carter

Yes, sir and I -- as I indicated in that item, all of which required us to submit all of our files and so forth, which we could properly -- we could not comply with and we indicated that into the Court.

This was just physically impossible for us to do and we so said -- said this in our -- in our motion.

Charles E. Whittaker

And mostly denied on the next day, the 31st of July.

Robert L. Carter

No, sir.

That was denied on July 30.

Charles E. Whittaker

Same -- same date?

Robert L. Carter

Yes, sir.

Charles E. Whittaker

July 30?

Robert L. Carter

Yes, sir.

Felix Frankfurter

In the -- the interlocutory decree, there was an ex parte -- that was ex parte, wasn't it?

Robert L. Carter

No, sir.

The -- temporary (Voice Overlap) --

Felix Frankfurter

-- ex parte proceeding --

Robert L. Carter

The temporary restraining order --

Felix Frankfurter

Well, now did that restrain you -- didn't that restrain you from doing any business?

Robert L. Carter

It restrained us from doing business and yes.

Felix Frankfurter

All together?

Robert L. Carter

Yes, sir.

Felix Frankfurter

It wasn't merely a dislocation, but you were restrained from doing any business?

Robert L. Carter

Yes, sir.

Felix Frankfurter

On ex parte.

Robert L. Carter

And from doing any business, from soliciting, from maintaining any chapters and holding any meetings in Alabama and from carrying on any activities in Alabama.

That would be as (Voice Overlap) --

Felix Frankfurter

That -- that tied you completely.

That immobilized you until the restraining order came on -- if it did come on for a hearing.

Is that right?

Robert L. Carter

It never came on for it.

Felix Frankfurter

It never came.

Robert L. Carter

Yes, sir.

Felix Frankfurter

But did you continue under the restraint of that until the contempt proceeding?

Robert L. Carter

We did -- we obeyed the order that is that we notified our affiliates that the order was enforced and we had no meetings and we did nothing to disobey the order.

Felix Frankfurter

What I want to know is when did the -- when did the obligation of that restraining order seized?

When is that --

Robert L. Carter

That -- the restraining order is still in effect.

Felix Frankfurter

But the restraining order continued to run and runs to this moment.

Robert L. Carter

Yes, sir, because -- because of the fact that we -- because we are in contempt under Alabama law, we have no right to proceed on the merits of the restraining order.

Our motion to dissolve was never heard so that the restraining order has been in effect, ex parte since June 1st, 1956.

Felix Frankfurter

Let's see if I understand that.

According to Alabama law, whether it's the decision of the statute, it doesn't make any difference.

According to Alabama law, a restraining order, putting new for the time being out of business completely, continues and has not been reviewed or it has not been considered for the view -- to setting it aside and making it permanent because in the meantime -- in the meantime, the State moved disclosure and you did not fully satisfy the requirement of disclosure granted by the judge.

You offered some compliance, but not all of it.

Robert L. Carter

Yes, sir.

Felix Frankfurter

It thereupon cast you in contempt and that -- that as it was suspended any action on the restraining order except that the restraining order still restrained you. Is that the situation?

Robert L. Carter

That's -- that's the situation precisely.

William J. Brennan, Jr.

What happened to this provision requiring (Inaudible) the fund, is that State or something?

Robert L. Carter

The provision with respect to the -- the State has made no effort to collect the fund.

We don't have -- the fact of the matter is, we have no funds in Alabama and there are some questions as to whether or not under the conflict rules of Alabama could collect the -- the money, but I think that Alabama has accomplished its purpose which was to get at that business and put us out of Alabama and the State has not proceeded to file (Voice Overlap) --

William J. Brennan, Jr.

Why is it your motion to dissolve was never heard?

Robert L. Carter

Well, when we filed that motion to dissolve on July the 2nd, it was set down for hearing on July 17th.

On July 5, the State comes in and says for us to disclose our members.

On July 9, that was heard and granted.

When we refused to the hearing on these objections and so forth, the court continued the hearing that the -- time for us comply and then continue the hearing on a motion to dissolve so it would be behind the hearing on the -- on the question of whether or not we were to comply with the order.

William J. Brennan, Jr.

Then they say they'll not hear it unless you comply with the order.

Robert L. Carter

That's right.

That was -- that's the -- the exact result of what's going on.

Felix Frankfurter

Let me ask you this.

Under Alabama law, supposed you were to pay the \$100,000 because you continued in recalcitrance and disobedience, and referred yourself by performance, but paid the fine.

Is the restraining order, the motion to dissolve not appealable?

Robert L. Carter

Well, I would say --

Felix Frankfurter

In short, there is this extensive restraining order.

In the meantime, the State asked for some disclosure and you feel that that's the thing you shouldn't disclose and you stand part on that.

Does that mean you have to live under that restraining order continuously?

Robert L. Carter

Apparently so, Your Honor, because it may well be that if we would have paid the \$100,000 that we would be considered purge of contempt, but then we will be ordered to comply with the order and we could be found in contempt again until the whole thing would go on.

William O. Douglas

You mean the discovery order?

Robert L. Carter

Yes, the discovery.

William O. Douglas

You -- you still have --

Robert L. Carter

Yes, sir, the discovery order, the interlocutory.

Charles E. Whittaker

Is this a civil contempt order that is purgeable or is this an outright fine as to a criminal contempt?

Robert L. Carter

The Supreme Court of Alabama has held that its civil contempt.

We --

(Inaudible)

Robert L. Carter

I beg your pardon.

And therefore is perjury.

Robert L. Carter

The Supreme Court has held -- of Alabama has held that it's -- it's a civil contempt.

If it were a criminal contempt, the fine could have -- could only be \$50 so that the Supreme Court has held that it's -- we contend it under the law of Alabama that -- and some of the cases of the Supreme Court that this should be considered as criminal contempt and the fine of \$50.

But in this opinion, the Supreme Court disagrees and holds that it is civil contempt.

Felix Frankfurter

Well, \$100,000 -- this isn't a bargain. You don't say you can either obey or pay \$100,000.

It isn't that kind of --

Robert L. Carter

No, sir.

Felix Frankfurter

I can't imagine it.

Robert L. Carter

Well, on the -- with this -- on July 10 that I -- that I can recapture the sequence of event, this motion was denied.

We then went to the Supreme Court of Alabama with a motion to stay or satisfy the -- the order of the lower court pending review on certiorari, pending the filing or disposition of a petition for certiorari in the Supreme Court.

Harold Burton

This was to satisfy the order of contempt.

Felix Frankfurter

No, to hold the order of contempt that's set to -- to set it aside in State, throughout the State for the proceedings or set it aside until we had an opportunity to file a petition for writ of certiorari in the Supreme Court of Alabama.

The Supreme Court of Alabama on July 31st, we had a hearing before the Court, ruled that the only way for the Supreme Court to review contempt adjudications was on certiorari, but since we have not filed the petition for certiorari that it did not considered that it could interfere the action of the Court insofar as the contempt of adjudication is concerned.

At that point and even before this decision was handed down, the Circuit Court issued its second order of contempt which find -- found that we have failed to comply within five days and found this in further contempt and fined us for \$100,000.

On August the 8th, we filed a petition for writ of certiorari in the Supreme Court of Alabama.

This was denied as insufficient after hearing on August the 13th.

We filed another petition on August 20 and that petition was -- the opinion was handed down which is the -- which is in the record here.

What was the ground of insufficiency on the first petition for certiorari?

Robert L. Carter

Well, Mr. Justice Harlan, I -- I am not clear.

I think it was technically that we had failed to put in the petition, certain allegations which we have set forth fully in our brief, but they held that we hadn't technically complied with their rules.

Now, in its opinion on December 6, the Supreme Court of Alabama refused to grant the petition for writ of certiorari on the ground that if we had desire to seek a review on the merits of the order to disclose, the interlocutory order to disclose, that the proper method for us to sought such a review was by petition for writ of mandamus.

That on certiorari, adjudications of contempt on certiorari that the Court is concerned only to jurisdictional matter that it has to find that the order is void on its face that there is no jurisdiction of the parties or that contempt was not in fact committed or that the citation was in someway insufficient.

And the court found jurisdictionally and so forth that this case met all these requirements and therefore that the Circuit Court had the authority to find us in contempt in a jurisdiction and then in addition, but even though it said we don't have to, the court went to the merits of the order and held that on the merits, the court below had the authority to issue the order itself.

Now, we are -- we therefore feel that the very outside of these proceedings were met with the question of whether this Court has jurisdiction and we think that it unquestionably had.

We -- we take that position as we have indicated in our brief under the authority of Rogers versus Alabama.

William J. Brennan, Jr.

Mr. Carter, will you clear me up on this.

You read the Supreme Court's opinion as saying initially that this should have been by way of mandamus, not certiorari.

Robert L. Carter

On to -- to raise the issues that we won't raise.

William J. Brennan, Jr.

Yes.

Yes, but then after having decided that the Circuit Court did have jurisdiction, treating as within those limits under certiorari then went on to deal with the merits.

Is that to say that the merits were dealt with as if you had applied for mandamus?

Robert L. Carter

No.

The Court -- well, I've tend to take the position that that's what happened, but the -- but to no offense to the Supreme Court of Alabama and all honesty so far as this decision was concerned, it said that although we don't have to go for it and we can stop after we find that the court has jurisdiction and -- and --

William J. Brennan, Jr.

No, my question is they could have stopped in suggesting that the court in fact went on and dealt with the merits.

Robert L. Carter

That's right.

William J. Brennan, Jr.

Now, in dealing with the merits, did the court do what it would have done had you come up by way of mandamus?

Robert L. Carter

We think so.

Harold Burton

But the Court said that you're doing it because you didn't file mandamus?

Robert L. Carter

The Court said that we don't have to do anything further, but it went on and said that on the merits of the order, the order is valid and should be sustained.

We think in -- in an answer to Mr. Justice Brennan said, we think that in effect, the Court indicated that if we had come upon that damage, it would have sustained the order on the merits, but that's the substance of the opinion.

Felix Frankfurter

Now, Mr. Carter, if you, conscientiously and unquestioningly, concluded that under Alabama law, these should have been raised on mandamus.

That was your clear conviction.

Then, you would think the State Court decided it on a state ground which if you sought that.

Robert L. Carter

No, sir.

I -- the reason I say, "No, sir" is because if I remember a decision of this Court in Thomas versus Collins where this same kind of thing was done, I think that this Court said that even though the Court indicated that it did not have to go into the merits, since it did go into the merits, the issue was here.

Felix Frankfurter

Yes.

I understand.

If they said we decide it, but I thought this depends on Justice Brennan that you said you had honestly to say that they said we don't indeed, although we talk about this thing.

We really go in that ground.

Robert L. Carter

Yes.

Well, that's -- that's true.

Felix Frankfurter

Yes.

Now, if you thought that's the ground they went on and if you thought they were right about that ground then it would be a state ground.

Robert L. Carter

Well, yes.

Felix Frankfurter

Is that right?

Robert L. Carter

Yes.

Felix Frankfurter

All right, but -- but your contention is that that isn't so.

Robert L. Carter

That's right.

Felix Frankfurter

All right.

Robert L. Carter

We -- as we indicated in our petition for writ of certiorari, we think that what Alabama has done is to seek here too unfairly, to seek our right to have this -- this case reviewed for federal rights which we think are here under the guides of local practice.

Harold Burton

I can't find it's too late to seek by mandamus.

Robert L. Carter

We think so although, Mr. Justice Burton.

There are some decisions in Alabama where a person has come up to the Supreme Court on a petition for writ of certiorari or petition for writ of mandamus and the Court said, "You've taken the wrong proceeding, but we will treat it as a -- as the proper proceeding as a petition for writ of mandamus."

They did not do it here so that --

William J. Brennan, Jr.

Well, Mr. Carter, we were to agree with your interpretation of what was done here.

Would you then now have to argue the question you are about to argue?

This is not an ultimate ground --

Robert L. Carter

Yes, sir.

William J. Brennan, Jr.

-- that they unfairly, under the guidance of state practice (Inaudible).

Robert L. Carter

That's right.

Yes, sir.

William J. Brennan, Jr.

We don't even get to it if we agree with your first.

Robert L. Carter

Yes, sir.

Hugo L. Black

In Alabama, are petitions for certiorari ever treated as petitions for mandamus and decided on that basis by the Supreme Court.

Robert L. Carter

Well, I -- there is a case and the only case I know of quite frankly which was decided where -- in which a -- an Alabama -- I think it was in (Inaudible), it went to the Supreme Court of Alabama on a petition for writ of mandamus.

The Court held that this should have been from contempt on a petition for writ of certiorari.

But since you've asked for such further relief, we're going to grant -- we're going to treat it as a petition, as a proper petition and I -- I think I can cite that case for you to.

It is Armstrong versus Green which is cited at 60 S. 2d 834.

We do not cite it in our brief.

Now --

Felix Frankfurter

Your contention is that a fair reading of Alabama cases makes clear that as a matter of facts, on certiorari it does go beyond for mere technical questions of jurisdiction.

Robert L. Carter

There's no question.

Felix Frankfurter

That's your position.

Robert L. Carter

Yes, sir.

Felix Frankfurter

And since that's Alabama law in other cases, they can't refuse it in a case involving a federal right.

Robert L. Carter

Yes, sir.

Felix Frankfurter

That's your position.

Robert L. Carter

That's our -- that's our position that -- that under Alabama law, the -- the same kind of questions that we have here which go to the validity of the order, disobedience of which led to the citation of contempt and which raised constitutional questions involved, Alabama has decided those cases on petition for writ of certiorari from contempt.

And in fact, we go further insofar as we understood Alabama law, this was the customary way in which issues of this kind were raised and treated.

And, so that we think that under the -- we've decided the case which we think are in point in our petition for writ of certiorari in Alabama law and we think that the Court has jurisdiction.

Now, before I go into the argument of the merits, I think it's best for me to try to recapitulate what I think are the orders which are before the Court and before this Court which we ought to review.

We think that the temporary restraining order which is involved in this case, which barred us from all activities and in fact ousted us from the State, and barred us in complying with the law, the interlocutory order requiring us, among other things, to disclose the identification and the addresses of our members.

The first adjudication of contempt and the fine of \$10,000 which was entered on July 25, the second adjudication of contempt in the fine of \$100,000 which was issued on July 31, and the order and judgment of the Supreme Court of Alabama denying the petition -- our petition for writ of certiorari.

Harold Burton

How far does it lead from contempt?

Robert L. Carter

I didn't hear you, sir.

Harold Burton

(Inaudible)

Robert L. Carter

Yes, sir.

This is the -- I -- I meant that when I said that the order and judgment of the Supreme Court of Alabama in -- in this case, that's the opinion here.

Harold Burton

That is the one thing that is actually here on -- under your proceeding, isn't it?

Robert L. Carter

Yes, sir.

Yes, that -- that opinion is -- is here on (Inaudible) --

Harold Burton

That's what we (Inaudible) --

Robert L. Carter

That's right.

Harold Burton

-- that decision.

Robert L. Carter

That's right, sir.

Harold Burton

It's not the rest.

Robert L. Carter

Well, we think that the rest --

Harold Burton

It may be involved in that.

Robert L. Carter

We think that the rest is here and I -- if I'm -- I would -- if permitted, I would like to indicate how in a moment.

It's our contention that the entire proceedings in Alabama are void that the -- that the -- the Alabama authorities had no -- no authority and no power and no -- to oust us from the State.

That we have been deprived the right to carry on our lawful -- lawful activities pursuant to a temporary restraining order, the order to disclose the list of our members and it is contempt to adjudications.

We contend that the order requiring us to disclose the list of our members is a denial of our right, the right of the corporation and the right of its members to free speech and freedom of association and as protected by the First Amendment.

We contend that if we have disclosed the list of our members, they would have been subjected to possible harm, threats, and fears. We further contend that the punishment for contempt and the fines issued was so vindictive that they in and of themselves, an excess -- that in and of itself constitute as a denial of due process.

And that the atmosphere in Alabama which was one of open hostility to our organization and -- and its members that this has so insinuated itself into the proceedings in the Court that we think that the whole proceedings below was in fact a perversion of the judicial process.

Now, with respect to the free speech contentions, it's our view that as an organization whose purpose is to seek to improve the status of Negroes in America and to remove color discrimination, that we are to pursue this objective in a lawful manner, and that we are entitled, and our members are entitled to associate together to pursue this objective and that we have the protection of the Constitution of the United States in so doing.

Now, it is true that under the present status of affairs in Alabama that at the present time, our aims are at bearings with the -- with State policy, but the aims of -- and the objectives of the organization which are to remove racial and color discrimination from American life are in accord with the -- with the rights, privileges and immunities guaranteed under the Federal Constitution.

And although Alabama in a desire to maintain segregation and so forth, we think that we have a right to pursue our objectives of the removal of segregation, even though it would be a bearing with the State policy and that the State policy in this regard has no effect whatever.

Now, insofar as our members are concerned in the right of the organization to do this, it is our belief that under the -- the decisions of this Court that our members in the organization are entitled to pursue these objectives free and unsighted from any State control, acts compelling justification.

We think that's what the decision in this Court hold and we think that that has been repeated in the two latest decisions that we know of on the subject decided last term, Sweezy and Watkins.

Now, we do not -- we do not contend of course that the State may not control the organization and may not limit its activities in some way, but we do -- we do contend that whereas here, First Amendment rights are being invaded that the balance has to be struck between the necessity for the regulation and the freedom which has to -- which we feel we're entitled to have.

Alabama has offered no justification whatever in any -- in any paper filed in this case to warrant the -- the restraints issued or to warrant the order with regard to our members.

There is no necessity, no need that has been shown as to why this -- the Attorney General desires to know who our members are.

No purpose would be served by it, in fact, what would happen insofar we are concerned with this is that the status spreading on the ground which has no right to trail.

Now --

Charles E. Whittaker

I'm sorry if I interrupt you.

Robert L. Carter

Surely.

Charles E. Whittaker

Suppose I might find out the answer to this (Inaudible).

Do you claim that it was not within the power of the trial court in sustaining this motion to produce, to require you to give the names and the addresses of your members, not within his power?

Was that relevant in other words to the lawsuit pending before the Court as to whether or not you were doing business there and within the power of the trial court so to order?

Robert L. Carter

We -- we think it was not.

We think not only was it not relevant.

We think that the trial court had no authority to order this disclosure because of the fact that our contention is that the right of our members to associate together in the organization, to associate together is -- is protected from enforced disclosure to any State authority. This is our contention.

Now, on the question of relevance, if we think it is not a basic question, but on the question of relevance in -- in the light of our answer in which we had admitted that we had the kinds of operation that we have been carrying on, what we have been, the character of our -- of our operation, not only in the Alabama but throughout the United States, the question of who are members were have nothing and no relevance whatever to the -- the question which was purportedly before the court as to whether or not we were doing business.

And besides that, when we offered to register and offered to waive our right to object to Alabama saying whether we were or we're not doing business, if there had been any relevance, we submit that it was lost at that point.

There was no issue before the Court from which the -- the identification of our members had any relevance whatever.

Does that answer your question?

Charles E. Whittaker

Yes, I think so.

Robert L. Carter

Now, it's our -- our theory that the only purpose of this order to disclose was in order that the Alabama Court and the -- the Attorney General was in fact seeking to use this so that we would be placed with two which we consider unconstitutional conditions.

Either we have to comply with the order to disclose and therefore, submit to a violation of our right of free speech and right of free association, or we risk content and we are ousted from the State as we were and never get an opportunity to test the merits of the order.

Now, in our view, the -- the respondents have sought to utilize the subversion cases and the Bryant versus Zimmerman which we think have no relevance whatsoever in this case.

We're not -- we're not subversive.

There is no allegation that we were subversive.

There is no allegation in fact in the pleadings that -- that we have done anything illegal other than that we have been in Alabama according to the State's complaint without registering.

And we think that these cases have no purpose here because in those cases where the Court felt that the State might require or the federal government might require some invasion of free speech that in those instances, the Court found that there was some justification for it which we contend the Court cannot find in this particular case.

We feel that the -- and we think that the record shows that Alabama was using its Foreign Corporations Registration Act in this proceeding as a cloak to require conformance in the State on this issue of segregation as -- as oppose to anti-segregation.

Felix Frankfurter

Mr Carter, I'm not sure that I know your position on the question of the duty to file a certificate with the Secretary of State if that's the official.

Robert L. Carter

Well --

Felix Frankfurter

Suppose that was all that was in issue here, what would be your position?

Robert L. Carter

Well, we don't think it is an issue any longer, but we don't think it is in issue.

Felix Frankfurter

That's because you profit the signing of it.

That's because you are ready to file that?

Robert L. Carter

Yes, sir.

Felix Frankfurter

So, that isn't before us then, is it?

Robert L. Carter

We don't think so.

Felix Frankfurter

Well --

Charles E. Whittaker

You wanted to file the -- pay the charges, the fees, registration fees and so forth at the same time?

Robert L. Carter

Yes, sir.

We offer to comply insofar as the law is concerned.

Felix Frankfurter

Well, the reason for -- the reason why states want to have foreign corporation so-called to file their certificate is in order to protect their own citizens for various reasons, so as to know whom to sue.

Robert L. Carter

Yes.

Felix Frankfurter

Now, you have your membership corporation, which mean that you're doing business without profit and therefore, the restriction or the qualifications are different in New York from what they have forbidden.

If you raised this file and if the State has a right or at least there is nothing in the Federal Constitution to bar Louisiana -- Alabama from saying, "You must file a certificate," because if you are engaged in any kind of activity, have an office, you rent something.

You may owe the landlord or you're -- the conditions maybe in -- in such order, that order that the licensee coming in therefore and sue somebody, and they have the right to know whom to sue, who's responsible.

Is that right?

Robert L. Carter

Yes, sir..

Yes, sir.

Felix Frankfurter

So that there is a distinction that I'd like to put it here, between requiring -- I'm not saying what the legal consequence is.

There is a distinction between Alabama's right to say, "You give us the names of your officers, and you give us the names of people scattered all over Alabama which support your cost."

Isn't that?

Robert L. Carter

I think so.

I -- I think that in Alabama -- all Alabama requires for persons to domesticate are that they file their articles of a corporation which lists the persons that are incorporated and I -- and I believe the members of the Board of Directors that --

Felix Frankfurter

The responsible people.

Robert L. Carter

That's right.

Now --

Felix Frankfurter

You have no objection to that, do you?

Robert L. Carter

No, sir.

We -- we don't -- we offered to -- to comply and the reason I -- I think that all of this is, even if we take the position and concede that Alabama had the right to request us to do that, we think that they have no authority to -- to use this as a jumping off ground to do the things that it had started and we say this for this reason.

The -- the law in Alabama requiring foreign corporations to domesticate is to do precisely what you've indicated.

Now, technically, admitting that we were doing business, technically only were we in violation because of the fact that Alabama knew our -- knew that we have a Southeast regional office.

In fact of the matter is their tax is an exhibit to their complaint.

They served the complaint on -- on us there. We submitted to the State's jurisdiction.

There is no indication at all as between 1918 and 1956 and we have been -- had affiliates and had been doing the same thing in Alabama during that period of time that we -- in 1918 and 1956, that there was ever any effort by any Alabama citizen to sue the corporation which was defeated because we had not complied.

Charles E. Whittaker

Well, but you don't argue Mr. Carter that failure to enforce the law for a period stops the sovereign from enforcement later.

Robert L. Carter

We -- we don't argue that at all.

We do think that it raises some presumption that this irreparable harm that's with no other contentions that this irreparable harm which the State alleged did not in fact takes place.

Charles E. Whittaker

You -- do you -- is it -- did the Alabama Trial Court have legal authority to impose under the law of Alabama some penalty of whatsoever kind for the failure to comply within the time prescribed with an order to produce?

Robert L. Carter

You mean in order to produce the names and the address of our members?

Charles E. Whittaker

Did the trial court (Inaudible)?

Robert L. Carter

Well, assuming that the order is a valid order, Mr. Justice Whittaker.

Charles E. Whittaker

Yes, yes, yes.

Robert L. Carter

They have the -- they would have that now under content if we -- if we disobeyed it.

As I understand Alabama law, if we -- as we disobey that order as any other order, we're contempt to Court.

And the Court has the power to -- to enforce it by its contempt to adjudication, fine et cetera, but we don't think that they -- I don't know of any other power that they had in terms of this order that you are referring to.

Let's assume that it was a valid order, but we don't contend that it was a valid order.

I mean, that's our position.

Felix Frankfurter

Mr Carter, may I get a little more light from you?

It is Alabama law you say that when a -- when a -- what do you call that, restraining order is outstanding, if you don't obey it, if you don't obey and therefore it could be thrown into contempt.

You can't raise the -- the validity or the scope of the restraining order.

Is that right?

That's what you say is Alabama law?

Robert L. Carter

Well, if -- if at any time in the proceeding, if the Court pleases, as I understand Alabama law and I think that the Attorney General concedes this.

If -- if at anytime in the proceeding, the result of this order, we are put in contempt then the whole proceedings is aborted, stopped --

Felix Frankfurter

Yes, go on.

Robert L. Carter

-- whatever has happened remains and I would suspect that the Attorney General would then have the right to -- to obtain a default judgment and which will then perhaps make this appealable.

Felix Frankfurter

But you say --

Robert L. Carter

But we say not to --

Felix Frankfurter

-- you say that -- you say that that ordinary provision of Alabama law suspending a restraining order does not bar this Court from saying that you were thrown into contempt for disobeying a restraining order that was -- that exceeded the constitutional speed limit?

Robert L. Carter

Yes, sir.

Felix Frankfurter

In that, they prohibited you from doing business when there was no relation between that protection given to Alabama and any interest of it under -- ensured that there was no possible irreparable damage that required such an extreme restriction of your right.

Is that right?

Robert L. Carter

Yes, sir.

Felix Frankfurter

Although -- although on a restraining order in ordinary instances, that might be alright.

Now second, do you say that you're drawn in contempt because you disobeyed or build with discovery or whatever it's called, one of the features of which was the disclosure of your membership and that Alabama had no right to exact --

Robert L. Carter

Yes, sir.

Felix Frankfurter

Are those the two chief -- are those the two things?

What else is there that you complain?

Robert L. Carter

Well, we --

Felix Frankfurter

So far as I understand, those are the two things.

Robert L. Carter

So, we think that the contempt itself is so outrageous, but now I mean the --

Felix Frankfurter

Do you mean the fine -- the amount?

Robert L. Carter

A \$100,000 fine.

We think that's --

Felix Frankfurter

Now, what do you say to the decision of this Court that obedience is due to an order even though a court may later be found to have improperly issued the order?

Robert L. Carter

As -- as I understood that, that was the distinction that this Court made between criminal and civil contempt and that we have obeyed the temporary restraining order, so that we have not -- there is no public defiance of the -- of the Alabama court.

We disobeyed the -- the order of -- ordering us to disclose because we thought that this was the only way that we can preserve our rights.

Felix Frankfurter

And that is the only way you contest that.

So that you're not within Louis case --

Robert L. Carter

No, sir.

Felix Frankfurter

-- and that, you didn't snap your fingers at the junction -- the injunctive process.

Robert L. Carter

That's right.

Felix Frankfurter

But you are ordered to produce and you think you're ordered to produce something that the Constitution had no right to ask you to produce --

Robert L. Carter

That's right.

Felix Frankfurter

-- and you stood your ground.

Is that right?

Robert L. Carter

That's right.

Charles E. Whittaker

I'm sorry to ask you some more questions.

Do I correctly understand you to say to Justice Frankfurter that you're complaining of the temporary restraining order --

Robert L. Carter

Yes, sir.

Charles E. Whittaker

-- as well as the finding of the contempt in which here is defined?

Robert L. Carter

We --

Felix Frankfurter

From a particular provision of that restraining order.

Robert L. Carter

The -- the -- we think that the court below has no juries -- that the court in effect acted arbitrarily, ousted us in Alabama.

It had no jurisdiction, no authority to do this under the basis of this record.

We think further if I -- if I may just finish.

We -- we think further that the -- that the Supreme Court of Alabama sustained the authority of the Court to issue this temporary restraining order, even under the theory of the contempt which it had because it said that they have to be in jurisdiction in order for -- for -- it could have reviewed jurisdiction on certiorari.

So the Supreme -- I'm sorry.

Charles E. Whittaker

(Inaudible) I'm asking you how you get the temporary injunction if there is no temporary restraining order -- temporary injunction as I understood (Inaudible) --

Robert L. Carter

Yes, sir.

The (Voice Overlap) --

Charles E. Whittaker

(Inaudible) District Court or the trial court except by a motion to dissolve which was never heard and that all (Inaudible) was issued upon and probably were not, then you will properly cite the contempt to fine.

Robert L. Carter

Well, the Supreme Court of Alabama had to necessarily, we thin, raise the issue of the temporary restraining order in that court.

It held that the court below had jurisdiction to do what it did.

Now, in so doing, we contend that it has to go to the question of whether the Court had the right to issue the temporary restraining order/ Otherwise, it would have to upheld that the order to produce constant with it was void.

We think that this is very definitely before the Court, but not only as the temporary -- not only as the order to disclose in the contempt before the Court, but to go back to the initial thing that started the temporary restraining order itself.

And -- and our contention is that all of these matters are here and that they should be disposed of by this Court.

Earl Warren

Mr. Rinehart.

Edmon L. Rinehart

Mr. Chief Justice and members of the Court.

Mr. Justice Whittaker's question is what I would like to concern myself with at the outset because it goes to the very heart of the case of what this Court has to review.

Now, the opinion of the Supreme Court of Alabama deals with the Alabama law on certiorari in a limited review which that application or petition for that particular remedial writ is limited to, and that is jurisdiction of a person, jurisdiction of a subject matter, the regularity of the contempt proceedings, for example, whether there was a correct citation, whether there was even a hearing on this contempt.

All of those things will be looked at on the face of the record.

That is all that you get by certiorari and that's all this Court looked at.

It is true and we do not deny that the Court then went on and discussed certain constitutional questions, not all of the constitutional questions which, Mr. Carter has discussed here, but certain of them, such as the question of a corporation's privilege against self-incrimination, whether a -- you can raise the rights of persons.

In other words, whether certain of these rights are personal rights and you may not assert the right of another.

Those things were discussed, but they there were not made the basis of the decision.

They said mandamus was the proper way in which to review the order to produce and that a review of that order to produce was not before that court, and I would like to -- now, enter on a -- I hope I'm not too late with the discussion of the common law writs of mandamus in Alabama.

It is the established law of Alabama that the review of interlocutory order of a Court of whatever nature is by writ of mandamus, petition I should say for writ of mandamus. Ex parte Hart which is cited in our brief, it is also cited in the opinion of the Court.

This is -- I'm reading now from the record or transcript of record at page 25, an order requiring defendant to produce evidence in a pending clause maybe reviewed on petition for mandamus, Ex parte Hart, 240 Ala. 642.

There is no lengthy discussion of the use of mandamus in that opinion.

It was merely assumed that that was the proper way and it has always to my knowledge been the proper way to review in order to produce.

For example, other types of interlocutory orders in a pending criminal proceeding.

The State made what amounted to a type of motion to have the defendants examined set to the Tuscaloosa Hospital for mental examination to determine his present sanity or his sanity at the time of the alleged defense.

The trial court refused to make -- to send the defendant there as a denial of certain constitutional rights which are not relevant.

The law of Alabama is that when you have an order of that nature, fundamental to the future conduct of the proceedings that it should be tested by petition for writ of mandamus, the State in fact applied for the writ and I may also say that it's still pending, not whether the writ -- whether it's a wrong remedy, but the question of whether we're entitled of the writ, whether the order is unconstitutional.

Now, the orderly -- this is one of these springs, these traps for the unwary that have been criticized at all.

This is a very orderly way to proceed in these matters, every logical way to proceed in these matters, because what happens as in this case on the 11th of July, there is an order to produce at a future time.

What is the remedy?

File a petition for writ of mandamus in the Supreme Court of Alabama and they contest every single constitutional question concerning the justification of that order, the questions of its relevancy.

All of those questions maybe going into, but this petitioner chose -- didn't choose that path.

He waited until the 11th hour.

Now, I'm a little ahead of myself.

I should say he waited until the 23rd of July and then filed an answer.

Now, that answer, I must disagree with counsel for the petitioner, is a rather odd type of answer and then he said, "Well, we do maintain an office and we do have a couple of employees there.

We don't think we have to register, but we would be willing to register," but they never really come out and say, "We're doing business in Alabama."

And that is an extremely important issue despite the tender of compliance with the registration statute.

Tom C. Clark

It's more than registration of compliance by one corporation (Inaudible)

Edmon L. Rinehart

The statutes on that are set out in petitioner's brief at page 35.

They are, there is more than that and of course even compliance with registration means that you have -- you can't exceed whatever powers you have.

You can't -- you can't counter to Alabama's laws.

All of those things involved.

William J. Brennan, Jr.

Well, Mr. Rinehart, those statutes at 35, do I read them accurately that Section 192 requires the filing of a certified copy of articles of incorporation under seal and so forth and signed by the President and the Secretary, designating at least one known place of business and an authorized agent or agents residing thereat.

That is within the State.

Now, that's all wasn't it?

Is there anything else?

Edmon L. Rinehart

There is a very small filing fee.

William J. Brennan, Jr.

Yes, \$10 or something like that.

Edmon L. Rinehart

As a matter of fact, that's one of the important questions and the reason for the relevancy of the document's requested, because the government or the theory of the State's case is not merely -- you ought to do it now, regardless of what you've done in the past and you can pay your petty little fee here and do this and go and send no more.

We think that the State has -- I didn't wish to get on this, but we think the State has a power to exclude.

William J. Brennan, Jr.

Well, what I -- what I was interested at the moment.

This is all that the organization was required to do to domesticate as we've been using that (Inaudible).

Edmon L. Rinehart

That -- that is correct.

William J. Brennan, Jr.

Yes.

Edmon L. Rinehart

As far as -- just coming in, if when a corporation first comes to Alabama or decides they want to, they come in and they file these papers.

William J. Brennan, Jr.

Yes.

Edmon L. Rinehart

I think that they are --

William J. Brennan, Jr.

Well, I -- I'm not sure, it must be true in Alabama.

I know it is in New Jersey, but very often foreign corporations who have the same obligation in my State that they do in Europe.

Maybe they're quite awhile before they make these filings.

That must be so in your State, too, isn't it?

Edmon L. Rinehart

I -- I have no detailed information on that.

We would take the position that they should do that before they start business.

William J. Brennan, Jr.

I know -- oh, I know.

They take that position.

The Secretary of State in New Jersey takes the same position, but I'm sure that there are great many of them who don't get around to doing it for some time.

They don't all do it the first day they show up.

Edmon L. Rinehart

I -- I can't answer that question directly.

I simply do not have the -- the information.

William J. Brennan, Jr.

Well, are you making a point of the fact that there was a delay here?

Edmon L. Rinehart

A -- a great delay, a many years delay.

William J. Brennan, Jr.

Whatever it was, a year or two years, whatever it maybe.

Edmon L. Rinehart

Yes, we are.

William J. Brennan, Jr.

You're making the point?

Edmon L. Rinehart

Yes, we're making that -- it's one of the most important matters in the case once we get to the question of whether the whole merits of the case are subject to review.

Yes, we do.

Felix Frankfurter

After all, was this -- was this corporation notoriously doing business in the State?

Edmon L. Rinehart

I would say, yes, sir.

Felix Frankfurter

Yes.

And they've been notoriously doing business for a good many years.

Edmon L. Rinehart

I -- I can only speak of my own knowledge which would at least go back --

Felix Frankfurter

No, no, (Voice Overlap) --

Edmon L. Rinehart

-- go back for several years, two or three years at a minimum.

Felix Frankfurter

And probably before that, isn't it?

Edmon L. Rinehart

Yes, I think in fact the petitioner admits that they have taken certain activities for great many years but denied essentially that that was doing business in Alabama.

Felix Frankfurter

Well, I know they do that, but I mean from the point of view of the importance to you of their disobedience from the State point of view to file a certificate or to apply for it.

Is that right?

Edmon L. Rinehart

Yes, sir.

Felix Frankfurter

All I'm saying is that if they've been doing this notorious business as I should think they would take judicial notice of.

State officials also have this knowledge and -- and therefore, it has some bearing on it on whether overnight you need to put him out of business by a restraining order.

Edmon L. Rinehart

I -- I think that would be correct if we ever got to the motion to dissolve the temporary restraining order, which I don't think we ever do get to really.

William J. Brennan, Jr.

Well, Mr. Rinehart, one last question about this.

This statute speaks of designating a known place of business and an authorized agent, authorized for what?

Edmon L. Rinehart

Service of process.

William J. Brennan, Jr.

So that the statute has a single purpose, doesn't it, to have a place at which the officers of the State required to serve process upon it, knows where it can be reached and upon whom to make service?

Edmon L. Rinehart

That -- that is the most important --

William J. Brennan, Jr.

That is the purpose of the statute.

Edmon L. Rinehart

That's the purpose of this statute.

I should like to point out that there's a constitutional provision and it's not merely a statutory provision.

And in fact, the constitutional provision is held to be self-enabling.

And so, it's a question of whether you can look at this and say you have everything, though the statute doesn't say why it is.

I mean -- I beg your pardon, the constitutional provision, Section 232 doesn't say what its purpose is except to protect people for this service or process.

William J. Brennan, Jr.

Well, I mean there's nothing unusual about this.

Edmon L. Rinehart

No.

William J. Brennan, Jr.

Then give me one of the 48 states has an identical statute, doesn't it?

Edmon L. Rinehart

There is question of franchise taxes involved also which they are supposed to, but they -- before -
- to get an exemption from certain taxes, you must establish the nature of your corporation, too.

And of course we're not making a great point of that in this particular case.

Rather, we --

Earl Warren

Mr. Rinehart, if -- if a corporation is delinquent in complying with law, is there any authority of anyone in the State to prohibit them from complying with the law when they are -- was called to their attention?

Edmon L. Rinehart

There is no such statutory authority.

Earl Warren

Well, is there any authority?

We -- yes.

We think -- we think the authority can be found in State ex rel Griffith against Knights and the Ku Klux Klan, a Kansas case.

William J. Brennan, Jr.

Well --

Earl Warren

Well, a Kansas case?

Edmon L. Rinehart

Yes, Your Honor.

Earl Warren

Well, what I am getting at is this.

Has it ever been declared to be the law of Alabama that anybody in the State can -- can prevent them from complying merely because they were delinquent?

Edmon L. Rinehart

There is no case law and no statutory law, either.

Earl Warren

No case or statutory law.

Well now, then I suppose we have to go to -- to what laws we -- we have and I notice here that -- that the -- on page 35 of the brief for our petitioner that you just called our attention to that there are certain penalties prescribed for not complying and for doing business without complying.

If that is true and the State has set those penalties and there is no other statutory law or no -- no judicial law, aren't those the only penalties that you should be looking at exactly?

Edmon L. Rinehart

No --

Earl Warren

I -- I think you might as well answer that in the morning.

We'll --

Edmon L. Rinehart

Yes, Your Honor.

Earl Warren

-- adjourn.